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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DOUGLAS FLORES,

Defendant and Appellant.

F070506

(Super. Ct. No. 1473364)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Stanislaus County. Linda A. McFadden, Judge.

Elaine Forrester, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Julie A. Hokans, Deputy Attorney General, for Plaintiff and Respondent.

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\* Before Gomes, Acting P.J., Poochigian, J. and Smith, J.

Defendant Michael Douglas Flores was convicted by no contest plea of battery on a spouse or cohabitant (Pen. Code, § 273.5, subd. (a)).<sup>1</sup> He admitted having suffered a prior conviction and having served two prior prison terms (§§ 273, subd. (e)(1), 667.5, subd. (b)). The trial court sentenced him to seven years in prison. The court also imposed various fines and fees, including a “\$500 batterer [*sic*] shelter fund fine” pursuant to section 1203.097. On appeal, defendant contends, and the People concede, that the \$500 fee imposed pursuant to section 1203.097 constitutes an unauthorized sentence that should be stricken. We agree.

Section 1203.097 applies only when the defendant is granted probation. It states in pertinent part:

“(a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include ... [¶] ... [¶] (5)(A) A minimum payment by the defendant of a fee of five hundred dollars (\$500) to be disbursed as specified in this paragraph.... [¶] ... [¶] (11) The conditions of probation may include ... one or more of the following requirements: [¶] (A) That the defendant make payments to a battered women’s shelter, up to a maximum of five thousand dollars (\$5,000).” (§ 1203.097.)

Here, defendant was not granted probation, and therefore the section 1203.097 fee was unauthorized because it “could not lawfully be imposed under any circumstances in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354.) The fee must be stricken.

### **DISPOSITION**

The \$500 fee imposed pursuant to section 1203.097 is stricken. As so modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

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<sup>1</sup> All statutory references are to the Penal Code.